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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE, Plaintiff and Respondent, v. JESUS BECERRA, JR., Defendant and Appellant.	G051370 (Super. Ct. No. 13NF0191) O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Kazuharu Makino, Retired Judge. (Retired judge of the Orange Super. Ct. assigned by the Chief Justice pursuant to art. VI, § 6 of the Cal. Const.) Affirmed.

John Derrick, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, Eric A. Swenson and Lynne G. McGinnis, Deputy Attorneys General, for Plaintiff and Respondent.

Jesus Becerra, Jr., appeals from a judgment after a jury convicted him of felony possession for sale of a controlled substance, misdemeanor possession of controlled substance paraphernalia, and felony sale or transportation of a controlled substance, and the trial court, at a bench trial, found true he committed the two felony counts for the benefit of a criminal street gang. Becerra argues insufficient evidence supports the verdicts and his Sixth Amendment confrontation rights were violated.

In our prior nonpublished opinion *People v. Becerra* (Apr. 28, 2016, G051370) (*Becerra I*), we affirmed Becerra's convictions. In doing so, we rejected his contentions insufficient evidence supported his conviction for misdemeanor possession of controlled substance paraphernalia and the findings he committed the felonies for the benefit of a criminal street gang. Additionally, we accepted Becerra's concession that based on the state of the law at the time (*People v. Gardeley* (1996) 14 Cal.4th 605 (*Gardeley*)), portions of the gang expert's testimony did not violate his Sixth Amendment right to confrontation pursuant to *Crawford v. Washington* (2004) 541 U.S. 36, 59 [confrontation clause bars admission of out-of-court testimonial hearsay statements except when declarant unavailable and defendant had prior opportunity to cross-examine declarant].

The California Supreme Court granted review on July 27, 2016, S235058. On September 21, 2016, the Supreme Court transferred the matter to this court, with directions to vacate our decision and to reconsider it in light of *People v. Sanchez* (2016) 63 Cal.4th 665 (*Sanchez*). Pursuant to California Rules of Court, rule 8.200(b), the parties filed supplemental letter briefs on the effect of *Sanchez, supra,* 63 Cal.4th 665. As we did in *Becerra I,* we affirm the judgment.

FACTS

One afternoon, Fullerton police officers were conducting undercover surveillance of a residence. The property consisted of a main house, a dwelling behind the house, and a rear shed. Becerra's brother, Jorge Becerra (Jorge), lived in the shed.

Two men approached the residence's gate. One of the men spoke to somebody on the other side of the gate and gave the individual money in return for an item. The two men walked away. About 20 minutes later, Becerra left through the same gate, looked around, got into a Chevrolet Impala, and drove away. Officer Pedram Gharrah notified other officers to stop Becerra's vehicle because he believed he had witnessed a hand-to-hand drug transaction.

Officers Jeff Corbett and Kenneth Edgar observed the vehicle drive over the limit line and they initiated a traffic stop. Becerra consented to a search of the vehicle. Corbett found a clear plastic baggie containing methamphetamine under the driver's seat. The number "6" was written on the baggie.

Meanwhile, Detective Joseph Zuniga entered the residence to conduct a probation search on Jorge. The southwest portion of the middle building was locked, and Zuniga obtained a search warrant for that room. Inside the room, he found two baggies containing methamphetamine, 66 empty one and three-fourth inch baggies, 25 empty one and one-half inch baggies, a digital scale, a methamphetamine pipe, several knives, and mail belonging to Becerra. The smaller empty baggies matched the baggie found in Becerra's car. There was a jar containing $125 in the kitchen. Forensic testing later revealed the methamphetamine in the car weighed 1.06 grams and the two baggies of methamphetamine in the room weighed 2.66 grams and 32 milligrams.

An information charged Becerra with possession for sale of a controlled substance (Health & Saf. Code, § 11378) (count 1), misdemeanor possession of controlled substance paraphernalia (Health & Saf. Code, § 11364.1, subd. (a)) (count 2), and sale or transportation of a controlled substance (Health & Saf. Code, § 11379, subd. (a)) (count 3). As to counts 1 and 3, the information alleged Becerra was previously convicted of violating Health and Safety Code section 11378 (Health & Saf. Code, §§ 1203.07, subd. (a)(11), 11370.2, subd. (c)), and he committed those for the benefit of a criminal street gang (Pen. Code, § 186.22, subd. (b)(1), all further statutory

references are to the Pen. Code, unless otherwise indicated). Finally, the information alleged Becerra suffered two prior strike convictions (§§ 667, subds. (d), (e)(2)(a) & 1170.12, subds. (b), (c)(2)(A)), and one prior serious felony (§ 667, subd. (a)(1)).

The trial court granted Becerra's pretrial motion to bifurcate the gang enhancements and prior conviction allegations. The court dismissed one of the strike priors in the interests of justice. Becerra waived his right to a jury trial on the gang allegations and prior convictions.

At trial, Edgar testified as an expert regarding narcotics. He stated most drug dealers have weapons for protection because buyers frequently try to rob the seller of money or drugs. He explained numbering the baggies was a way to keep track of the drugs and if a baggie has the number "6" on it, the first five baggies have either been sold or are available for sale. Edgar testified he was familiar with the items seized at the residence and the methamphetamine would yield over 200 individual doses. Based on the hand-to-hand drug transaction, the number on the baggie, and all the other evidence, Edgar opined the methamphetamine in the residence was possessed for sale.

The jury convicted Becerra of all counts. Becerra admitted the truth of the prior convictions. There was a bench trial on the gang allegations.

The prosecution offered the testimony of Zuniga, a gang expert. Zuniga testified concerning his background, training, and experience investigating traditional turf oriented Hispanic street gangs. As part of his experience, Zuniga interviewed gang members and read their correspondence. He explained that as a narcotics detective, he investigated gang crimes involving narcotics, including speaking with confidential informants about drug sale operations in gangs. He added that as a gang detective, he investigated about 200 gang crimes. He attended courses on the Mexican Mafia, including one where two former high ranking members spoke about the connection between the Mexican Mafia and Hispanic street gangs. Zuniga also read books written by those two individuals.

Zuniga stated he had investigated the gang Fullerton Tokers Town (FTT) and its gang member's crimes. He testified concerning its membership, common signs and symbols, and subsets. He opined its primary activities were murder, assault, robbery, sales of narcotics, felony vandalism, and gun possession. He later added burglary and vehicle theft to that list. He based his opinion on "past criminal activity documentation, police reports, arrests made as it relates to the [FTT] gang members." He testified concerning the statutorily required predicate offenses involving FTT gang members Edgar Velez (§§ 459) and Samuel Torres Bonilla (Veh. Code, § 10851). As to Velez, Zuniga based his opinion on the fact he was a self-proclaimed gang member who had been documented in gang territory numerous times. With respect to Bonilla, Zuniga based his opinion on the fact he was a self-proclaimed gang member who Zuniga had documented in FTT claimed gang territory with FTT gang members numerous times. He also spoke with detectives, and read police reports, field interview cards and street check documentation. Zuniga opined FTT was a criminal street gang as statutorily defined based on reading police reports and other documentation, and speaking with detectives.

Zuniga testified he knew Becerra and contacted him previously. Zuniga opined Becerra was an active participant in FTT at the time of the offenses based on "his prior documented arrests and documentation," his associations with other FTT gang members, his FTT tattoos, and the fact he lives in the "heart" of FTT claimed gang territory. Zuniga stated he was at the residence when the hand-to-hand drug transaction occurred and the residence was known as a FTT hangout and place of gang activity. He explained that at the residence in Becerra's room, he "believe[d] detectives" found a photograph of FTT gang members and a "'rest in peace'" T-shirt depicting a FTT gang member who had passed away, an item Zuniga characterized as sacred to gang members. Zuniga stated he was familiar with the address based on "numerous reports of gang activity," interviewing area residents, and speaking with gang detectives.

Zuniga opined Becerra was selling narcotics for the benefit of, at the direction of, or in association with FTT, with the specific intent to promote, further, or assist in criminal conduct by FTT gang members. He stated a non-gang member who sells narcotics in gang territory will either be forced to pay a tax to that gang or will not be able to sell. He explained that based on his review of "documentation" gang members who sell narcotics are required to pay a tax, a predetermined amount at a set time, to the Mexican Mafia, a prison gang, which secures the gang's safety in prison. He added that FTT had failed to pay the tax in the past resulting in a "green light" on its members in prison. He said it was extremely important for an individual gang member to pay the tax by either fronting narcotics to certain members of the same gang or selling to those individuals. Zuniga stated that paying the tax keeps the gang in good standing with the Mexican Mafia and demonstrates the gang has money. In forming his opinion Zuniga relied in part on a document from the Department of Homeland Security where a FTT gang member discussed paying the tax. Zuniga opined Becerra was selling drugs to benefit FTT because he was selling drugs in FTT claimed territory without interruption. When the prosecutor asked whether Jorge's arrest factored into his opinion, he answered, "For the other [FTT] gang members that were hiding in a room" at the residence.

On cross-examination, Zuniga stated Becerra joined FTT when he was 13 years old and got his FTT tattoos when he was a young man. Zuniga admitted there was no evidence the Mexican Mafia taxed Becerra or Jorge. He also admitted Edgar told him Becerra, 31 years old and a father of two children at the time of the offenses, left FTT many years ago, was inactive, and had only one law enforcement contact during the last six years, the one resulting from the charged offenses here. When defense counsel asked Zuniga about the discrepancy between his opinion Becerra was active in FTT and Edgar's statement he was not, Zuniga responded what he heard and what he believed are "two different things." He explained inactive gang members cannot live openly in claimed gang territory and display gang tattoos without risking confrontation.

The trial court found true Becerra committed counts 1 and 3 for the benefit of a criminal street gang. The court sentenced Becerra to three years on count 3, two years on the street terrorism enhancement, and five years for the conviction for a total prison term of 10 years. The court imposed and stayed sentence on count 1 and imposed 10 days jail with time served on count 2.

DISCUSSION

I. Sufficiency of the Evidence

"In considering a challenge to the sufficiency of the evidence to support an enhancement, we review the entire record in the light most favorable to the judgment to determine whether it contains substantial evidence—that is, evidence that is reasonable, credible, and of solid value—from which a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. [Citation.] We presume every fact in support of the judgment the trier of fact could have reasonably deduced from the evidence. [Citation.] If the circumstances reasonably justify the trier of fact's findings, reversal of the judgment is not warranted simply because the circumstances might also reasonably be reconciled with a contrary finding. [Citation.] 'A reviewing court neither reweighs evidence nor reevaluates a witness's credibility.' [Citation.]" (*People v. Albillar* (2010) 51 Cal.4th 47, 59-60 (*Albillar*).) However, we need not affirm a decision supported by a mere scintilla of evidence. (*Kuhn v. Department of General Services* (1994) 22 Cal.App.4th 1627, 1633.)

A. Street Terrorism Enhancements

Becerra argues insufficient evidence supports the trial court's findings he committed counts 1 and 3 for the benefit of a criminal street gang because the evidence was limited to he was a gang member and he sold narcotics. We disagree.

"The gang enhancement applies to one who commits a felony 'for the benefit of, at the direction of, or in association with any criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members.'

[Citation.] 'In addition, the prosecution must prove that the gang (1) is an ongoing association of three or more persons with a common name or common identifying sign or symbol; (2) has as one of its primary activities the commission of one or more of the criminal acts enumerated in the statute; and (3) includes members who either individually or collectively have engaged in a "pattern of criminal gang activity" by committing, attempting to commit, or soliciting two or more of the enumerated offenses (the so-called "predicate offenses") during the statutorily defined period.' [Citations.]" (*Sanchez, supra,* 63 Cal.4th at p. 698.) Expert testimony is admissible to establish sufficient evidence of the street terrorism enhancement. (*Albillar, supra,* 51 Cal.4th at p. 63.)

In *Albillar, supra,* 51 Cal.4th at page 60, the Supreme Court explained that although not every crime committed by gang members is related to a gang for purposes of the first prong, a crime can satisfy the first prong when it is gang related, meaning it was done for the benefit of, at the direction of, or in association with a gang. The court also explained the second prong, which requires the defendant commit the gang-related felony "with the specific intent to promote, further, or assist in any criminal conduct by gang members" (§ 186.22, subd. (b)(1)), need not encompass proof the defendant committed the crime with the specific intent to promote, further, or assist *other* criminal conduct by gang members. Instead, that subdivision "is unambiguous and applies to *any* criminal conduct, without a further requirement that the conduct be 'apart from' the criminal conduct underlying the offense of conviction sought to be enhanced." (*Albillar, supra,* 51 Cal.4th at p. 66.) The court concluded, "the statute requires only the specific intent to promote, further, or assist criminal conduct by *gang members*." (*Id.* at p. 67.)

1. Gang Related

Based on the entire record, the trier of fact could reasonably conclude Becerra committed counts 1 and 3 in association with and for the benefit of FTT. Officers observed a person at the residence's gate engage in what appeared to be a

hand-to-hand drug transaction and minutes later Becerra left through the same gate. When officers stopped Becerra in his car, he had methamphetamine in a baggie. Additionally, officers found the following in the locked portion of the residence's middle building: (1) Becerra's mail; (2) enough methamphetamine for 200 doses; and (3) indicia of drug sales, including baggies matching the bag found in Becerra's car. Additionally, Zuniga observed other FTT gang members at the house. The evidence demonstrated Becerra lived in FTT claimed gang territory, joined FTT as a teenager, and had FTT tattoos. Based on this evidence, a reasonable trier of fact could conclude Becerra was a FTT gang member who was selling narcotics and the gang would benefit from narcotics sales.

Becerra spends much time arguing the evidence demonstrated he was not an active member of FTT at the time of the offenses. His concession active gang membership is not an element of the street terrorism enhancement is dispositive and no further discussion of this claim is required. (*Albillar, supra*, 51 Cal.4th at p. 68 [§ 186.22, subd. (b)(1), liability "does not depend on membership in a gang at all"].)

Becerra also complains "there was no evidence *whatsoever* of any specific predicate offenses committed by FTT members involving narcotics." Unfortunately, the Attorney General does not address this argument, or explain how the evidence satisfied *Albillar's* two-prong test. Nevertheless, the trier of fact may consider the charged crime as a predicate offense. (*Gardeley, supra*, 14 Cal.4th at p. 625, disapproved on another ground in *Sanchez, supra*, 63 Cal.4th at p. 686, fn. 13.)

2. Specific Intent

Based on the entire record, the trier of fact could also reasonably conclude Becerra committed counts 1 and 3 with the specific intent to promote, further, or assist criminal conduct by *gang members*. As Becerra concedes, a lone gang member may have his sentence enhanced by section 186.22, subdivision (b)(1). (*People v. Rodriguez* (2012) 55 Cal.4th 1125, 1138-1139.) Here, based on the entire record, the trier of fact could

reasonably infer Becerra was a FTT gang member who was openly selling methamphetamine from his home in FTT claimed gang territory. Officers observed Becerra leave the gate where they had just minutes before witnessed what appeared to be a hand-to-hand drug transaction. Officers found drugs in Becerra's vehicle and his bedroom, and other FTT gang members hiding in the house. Zuniga opined Becerra was a member of FTT, a criminal street gang whose primary activity was narcotics sales.

Like in *People v. Ferraez* (2003) 112 Cal.App.4th 925, 931, where the evidence included gang expert testimony, defendant's admissions, and other evidence defendant planned to sell drugs in claimed gang territory, here Zuniga's testimony and Becerra's act of selling drugs in FTT claimed gang territory was sufficient evidence Becerra possessed, sold, and transported methamphetamine with the specific intent to promote FTT. Contrary to Becerra's claim otherwise, the evidence in this case was not limited to simply he was a gang member and he sold narcotics. (See *People v. Rios* (2013) 222 Cal.App.4th 542, 573-574.) Thus, there was sufficient evidence supporting the street terrorism enhancements as to counts 1 and 3.

B. Count 2

Becerra contends there was insufficient evidence he possessed the methamphetamine pipe.[1] Not so.

It is a crime to possess an object used for unlawfully injecting or smoking a controlled substance, knowing of the object's presence, and knowing it to be an object used for unlawfully injecting or smoking a controlled substance. (Health & Saf. Code, § 11364.)[2] "Possession may be physical or constructive, and more than one person may

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[1] Becerra concedes he does not dispute the sufficiency of the evidence supporting counts 1 and 3.

[2] The information charged Becerra with violating Health and Safety Code section 11364.1, subdivision (a). That section remained in effect until after Becerra's trial when the statute expired by operation of a sunset provision on December 31, 2014. Health and Safety Code section 11364 mirrors that section's language.

possess the same contraband. [Citation.]" (*People v. Miranda* (2011) 192 Cal.App.4th 398, 410.) Constructive possession requires that a defendant have the right to exercise dominion or control over either (a) the contraband or (b) the place the contraband is found. (*Ibid*.) While circumstantial evidence can be enough to show dominion or control (*id.* at pp. 410-411), mere presence or proximity to the contraband is not enough. (*People v. Small* (1988) 205 Cal.App.3d 319, 326.) The standard of review is the same as discussed above. (*People v. Carrasco* (2006) 137 Cal.App.4th 1050, 1058.)

Here, the evidence at trial demonstrated that in the locked room of the residence's middle building, officers found mail addressed to Becerra, methamphetamine, baggies that matched the baggie discovered in Becerra's car, and a methamphetamine smoking pipe. This evidence connected Becerra to the locked room, and the jury could reasonably rely on this evidence to conclude Becerra lived in the room and its contents, including the methamphetamine pipe, were his. The fact the evidence did not detail the quantity or type of mail, or that there were other people on the property does not alter our conclusion. Possession need not be exclusive, and it is sufficient Becerra's mail was found in the locked room. (*Miranda, supra*, 192 Cal.App.4th at pp. 410-411 [circumstantial evidence sufficient to demonstrate dominion and control].) Based on this evidence, it was reasonable to conclude Becerra possessed the methamphetamine pipe.

II. Sixth Amendment

Becerra asserts Zuniga improperly testified concerning his prior contacts and interviews with gang members, review of government documents, and conversations with detectives. We conclude any error was harmless.

In *Sanchez, supra*, 63 Cal.4th at pages 670-671, the Supreme Court addressed the extent to which *Crawford* limits an expert witness from relating case-specific hearsay in explaining the basis for an opinion and clarified the application of state hearsay rules to expert testimony. Pursuant to the confrontation clause and *Crawford*, the *Sanchez* court stated a hearsay statement is inadmissible unless it falls

within an exception recognized at the time of the Sixth Amendment's adoption or the declarant is unavailable to testify and the defendant had a previous opportunity for cross-examination or that opportunity was forfeited. (*Sanchez, supra,* 63 Cal.4th at p. 680.) A court employs the following two-step analysis: "The first step is a traditional hearsay inquiry: Is the statement one made out of court; is it offered to prove the truth of the facts it asserts; and does it fall under a hearsay exception? If a hearsay statement is being offered by the prosecution in a criminal case, and the *Crawford* limitations of unavailability, as well as cross-examination or forfeiture, are not satisfied, a second analytical step is required. Admission of such a statement violates the right to confrontation if the statement is *testimonial hearsay,* as the high court defines that term." (*Sanchez, supra,* 63 Cal.4th at p. 680.)

As to California hearsay rules, the *Sanchez* court distinguished between an expert's testimony as to general background information and case-specific facts. (*Sanchez, supra,* 63 Cal.4th at p. 676.) Historically, an expert may testify concerning her general knowledge and generalized information to assist jurors in understanding case-specific facts. An expert may also give an opinion about what case-specific facts mean. (*Id*. at pp. 676, 685.) However, an expert may not "supply case-specific facts about which he has no personal knowledge[,]" disapproving of *Gardeley, supra,* 14 Cal.4th 605. (*Sanchez, supra,* 63 Cal.4th at pp. 676, 686, fn. 13.) The court defined case-specific facts as "those relating to the particular events and participants alleged to have been involved in the case being tried." (*Id*. at p. 676.) The court provided several examples of this distinction, one of which is relevant here: "That an associate of the defendant had a diamond tattooed on his arm would be a case-specific fact that could be established by a witness who saw the tattoo, or by an authenticated photograph. That the diamond is a symbol adopted by a given street gang would be background information about which a gang expert could testify. The expert could also be allowed to give an

opinion that the presence of a diamond tattoo shows the person belongs to the gang." (*Id*. at p. 677.)

The *Sanchez* court stated courts frequently avoided any confrontation issues with expert statements by "concluding that statements related by experts are not hearsay because they 'go only to the basis of [the expert's] opinion and should not be considered for their truth.'" (*Sanchez, supra,* 63 Cal.4th at pp. 680-681.) The court disapproved of this justification when the expert relates case-specific facts as a basis for her opinions, stating, "If an expert testifies to case-specific out-of-court statements to explain the bases for his opinion, those statements are necessarily considered by the jury for their truth, thus rendering them hearsay." The court stated the evidence must be admitted through an appropriate witness or an applicable hearsay exception. (*Id*. at p. 684.) The *Sanchez* court added that expert testimony of case-specific facts implicates the confrontation clause and *Crawford* and adopted the following rule: "When any expert relates to the jury case-specific out-of-court statements, and treats the content of those statements as true and accurate to support the expert's opinion, the statements are hearsay. It cannot logically be maintained that the statements are not being admitted for their truth. If the case is one in which a prosecution expert seeks to relate *testimonial* hearsay, there is a confrontation clause violation unless (1) there is a showing of unavailability and (2) the defendant had a prior opportunity for cross-examination, or forfeited that right by wrongdoing." (*Sanchez, supra,* 63 Cal.4th at p. 686, fn. omitted.)

The *Sanchez* court applied the test to the evidence presented and concluded much of the gang expert's testimony violated the confrontation clause. (*Sanchez, supra,* 63 Cal.4th at pp. 694-698.) First, the expert testified to five prior police contacts with defendant, three of which were based on police reports compiled by the investigating officers during the investigations of those crimes and not admitted into evidence. These types of "statements about a completed crime, made to an investigating officer by a nontestifying witness . . . are generally testimonial unless they are made in the context of

an ongoing emergency . . . or for some primary purpose other than preserving facts for use at trial." (*Id*. at p. 694.) It did not matter the officer summarized the statements or that defendant himself was not accused of the crimes. (*Id*. at pp. 694-695.) Second, the expert testified defendant was a gang member based on the content of a sworn STEP notice retained by police, which recorded defendant's biographical and other information. This notice was testimonial because it was a formal sworn statement from a police officer the information was accurate, and its primary purpose was collecting information for later use at trial. (*Id*. at p. 696.) Finally, the expert relayed statements from a field identification card memorializing a contact with defendant. The expert's testimony was unclear and confusing on this issue, but "[i]f the card was produced in the course of an ongoing criminal investigation, it would be more akin to a police report, rendering it testimonial." (*Id*. at p. 697.) The *Sanchez* court concluded the confrontation clause violation prejudicial as to the gang enhancements because the main evidence of defendant's intent to benefit the gang was the expert's recitation of testimonial hearsay. (*Id*. at p. 699.)

The Attorney General argues Becerra forfeited his federal confrontation clause claim because he did not raise it at trial. We disagree, because based on the state of the law at the time of trial any objection would have been futile. (*People v. Rangel* (2016) 62 Cal.4th 1192, 1216-1217.)

In his opening brief, Becerra cites to numerous statements he claims were testimonial hearsay admitted in violation of his constitutional rights. In his supplemental brief, however, he fails to explain how each of those statements comports with *Sanchez*. To raise a proper challenge to the trial court's evidentiary rulings, Becerra was required to "demonstrate how each evidentiary ruling was erroneous" and "support such challenge with reasoned argument and citations to authority." (*Salas v. Department of Transportation* (2011) 198 Cal.App.4th 1058, 1074 [failure to demonstrate how each evidentiary ruling was erroneous constitutes forfeiture].) It is of no consequence,

however, as we conclude any error was harmless beyond a reasonable doubt pursuant to *Chapman v. California* (1967) 386 U.S. 18 (*Chapman*). (*Sanchez, supra,* 63 Cal.4th at p. 698.) "'The beyond-a-reasonable-doubt standard of *Chapman* "requir[es] the beneficiary of a [federal] constitutional error to prove beyond a reasonable doubt that the error complained of did not contribute to the verdict obtained." [Citation.] "To say that an error did not contribute to the ensuing verdict is . . . to find that error unimportant in relation to everything else the jury considered on the issue in question, as revealed in the record." [Citation.]" (*People v. Pearson* (2013) 56 Cal.4th 393, 463.)

Here, we are convinced beyond a reasonable doubt the alleged improper expert testimony did not contribute to the trial court's verdicts. The alleged improper expert testimony is based almost entirely on Zuniga's testimony he reviewed documents and spoke with detectives in forming his opinions. But this ignores Zuniga's significant personal experience and the weight of his testimony. Zuniga testified that throughout his nine-year career he had investigated FTT and its gang-related crimes. (*Sanchez, supra,* 63 Cal.4th at p. 676 [expert may testify concerning his personal knowledge].) He testified concerning FTT's membership, primary symbol, and claimed territory all of which was proper. (*Sanchez, supra,* 63 Cal.4th at p. 685 [expert may testify regarding background information].)

In forming his opinions, Zuniga also relied on "arrests made" of FTT gang members. We disagree with Becerra that we must "presume" Zuniga knew of the arrests based solely on reviewing documentation as he had significant personal experience investigating FTT. Additionally, certified court records establishing two predicate offenses were admitted into evidence. (*People v. Taulton* (2005) 129 Cal.App.4th 1218, 1224 [rap sheet not prepared for use in criminal proceeding and thus not testimonial hearsay pursuant to *Crawford*].) Those predicates and Zuniga's testimony based on his personal knowledge were sufficient evidence for the trial court to conclude a primary activity of the gang was the commission of certain statutorily enumerated offenses.

Additionally, Zuniga testified concerning Becerra based on his personal knowledge. Zuniga had previous contact with Becerra and testified he lived in the heart of FTT claimed gang territory and had FTT gang tattoos. The evidence established that after officers saw what appeared to be a hand-to-hand drug transaction over a gate at the residence, officers saw Becerra leave the same gate and later found him in possession of methamphetamine and found indicia of drug sales in his bedroom. Officers also found other FTT gang members hiding in the residence. Under these circumstances, we are convinced beyond a reasonable doubt that to the extent Zuniga's opinions were based on testimonial hearsay, it did not contribute to the trial court's verdicts. Thus, Becerra was not prejudiced by any violation of his confrontation clause rights.

DISPOSITION

The judgment is affirmed.

O'LEARY, P. J.

WE CONCUR:

ARONSON, J.

THOMPSON, J.